retried; he was subsequently convicted by the Magistrate and fined 50 cents. The appellant now appealed against the conviction.

T. W. Ong for appellant. The Common Gaming Houses Ordinance does not define the word "gaming". The word "gaming" or gambling" is defined in *Wharton's* Law Lexicon 14th edn. on page 445 as "the playing of any game of chance, as cards, dice etc., for money or money's worth." "Gaming" was defined by Wills J. in *Dyson v. Mason*[1] "it seems to me to have been held and rightly held that playing any game for money is gaming". Therefore, the playing of any game not for money but for a prize as a tin of cigarettes or other goods of this type unless the giving of such goods is merely colourable, does not amount to playing the game for money or money's worth. In *The King v. Chapman*[2] Lord Hewart C.J. referred to *Maxwell* on the Interpretation of Statutes, 7th edn. p. 244 in which it is quoted "Where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself".

Butterfield in reply.

Terrell, Ag. C.J.—Only two questions arise on this appeal; (1) whether the game was a game of chance, and (2) whether it was played for money or money's worth.

As regards (1), according to the evidence the board was spun so fast that it was impossible to distinguish the numbers. Such being the case, hitting any particular number must have been pure chance.

As regards (2), in *Luff v. Leaper*,[3] Blackburn J. considered a bottle of beer was money's worth and this decision was cited with approval by Huddlestone B. in *Dyson v. Mason*,[1]. In my opinion a tin of cigarettes is also money's worth. Accordingly, the player staked the price of his ticket and the owner of the dart board a tin of cigarettes, the result depending on pure chance. The elements of gaming within the meaning of the Ordinance were accordingly present, and the conviction was correct and the appeal must be dismissed.

Appeal dismissed.

Solicitors for appellant—*Braddell Brothers.*

[ORIGINAL CIVIL JURISDICTION]

TERRELL Ag. C.J.

November 6, 1940.

IN RE THE ESTATE OF SAFIAH BINTE TAHAR ALSO KNOWN AS SAFIAH BINTE TAGA DECEASED.

[SINGAPORE ORIGINATING SUMMONS No. 138 of 1940]

Powers of executor or administrator—Power to sell for purpose of distribution—Application to Court more than six years after death of de cujus—Procedure.

When a testator or intestate dies and the executor or administrator has paid all the debts and the administration expenses it is not always certain whether the administration is at an end and he becomes the trustee of the deceased's property **in specie** for the beneficiaries or the next of kin, as the case may be; or whether the executor's or administrator's power of disposal continues for the purpose of distribution also. In the past in the Colony the latter view has been adopted and grants **de bonis non** have frequently been made many years after all the debts and administration expenses have been paid merely for the purpose of facilitating distribution. This practice has been approved by the Supreme Court though it is not the only procedure that can be adopted.

When more than six years have elapsed since the death of an intestate no sale can be effected by the administrator without the sanction of the Court. Such sanction is not granted as a matter of course or upon an **ex parte** application and one or more of the beneficiaries should always be made respondent or respondents to the Summons. The Court may require to be satisfied as to the reasons for delay and will in every case where infants are interested require an affidavit of value so as to ensure that the property is not sold at an undervalue.

If, however, the Court is satisfied on these points the sanction will be given. The resulting sale will not be a sale by the Court, but a sale by the administrator with the sanction of the Court. Order 48 r. 2 (sale altogether out of Court) has no application in such a case, and accordingly the order authorising the administrator to exercise his powers does not require the declaration referred to in O. 48 r. 3.

Cases referred to:—

(1) *Norwood & Blalis Contract, In re*, (1917) 1 Jr. r. 472.

(2) *Ponder, In re* (1921) 2 Ch. 59.

ADJOURNED ORIGINATING SUMMONS.

P. Y. Tan for administrator.

M. J. Namazie for three next of kin.

The facts and arguments sufficiently appear from the judgment.

Cur. adv. vult.

Terrell Ag.C.J. The deceased, who died on the 21st May, 1933, intestate, was the wife of the applicant to whom letters of administration were granted on the

9th September, 1933. The beneficiaries under Mohammedan Law are the applicants and the deceased's seven children three of whom are still infants. The only asset remaining in the estate is an undivided half share in two pieces of land in the Changi district of Singapore having a total area of under four acres. It is to the interest of the beneficiaries that this property should be realised as they cannot reasonably enjoy their interests as tenants in common of an undivided half share, such interests being fractional.

The question arises as to the proper procedure to be adopted. It has been said that when an executor or administrator has paid all the debts and administration expenses the administration is at an end and he becomes a trustee of the deceased's effects *in specie* for the beneficiaries or next of kin as the case may be (*In re Ponder*[2]). On the other hand it has been decided in an Irish case *In re Norwood & Blalis Contract*[1] that the executors' or administrators' powers of disposal continue for the purpose of distribution also, and there can be no doubt that in this Colony this view has been adopted, and grants *de bonis non* have frequently been made many years after all the debts and administration expenses have been paid, and merely for the purpose of facilitating distribution. In the case of small estates this practice has much to recommend it. I do not say that this is the only procedure that can be adopted. Where an administrator has completed the administration and becomes invested with the character of trustee, an application under the Trustees Ordinance could clearly be made. In the present case the administrator's powers of disposal can be regarded as subsisting, subject to the provisions of s. 35 sub-s. 2 of the Conveyancing and Law of Property Ordinance.

In view of this section, as more than six years have elapsed since the death of the intestate, no sale can be effected by the administrator without the sanction of the Court, and the present application is made to obtain such sanction. The sanction of the Court is not granted as a matter of course or upon an *ex parte* application, and one or more of the beneficiaries should always be made respondents to the summons. The Court may require to be satisfied as to the reasons for the delay, and will in every case where infants are interested require an affidavit of value so as to ensure that the property is not being sold at an undervalue.

If, however, the Court is satisfied on these points the sanction will be given. The resulting sale will not be a sale by the Court, but a sale by the administrator with the sanction of the Court. Order 48 r. 2 (sale altogether out of Court) has no application, and accordingly the order authorising the administrator to exercise his powers does not require the declaration referred to in O. 48 r. 3.

In the case before me the only offer to purchase is from three of the adult beneficiaries who have offered $1,000, the valuation being $1,200. If the offer is increased to the amount of the valuation, the necessary sanction can be given.

Order accordingly.

[ORIGINAL CIVIL JURISDICTION]

MANNING, J.

July 12, 1940.

IN RE THE WILL OF M. MOHAMED HANIFFA DECEASED.

ABDUL JABBAR

v.

M. MOHAMED ABUBACKER.

[SINGAPORE ORIGINATING SUMMONS No. 71 of 1940]

Will — Construction — Bequests — Mohammedan Law.

The testator was a Mohammedan of the Hanafi Sect domicile in India. He bequeathed legacies of monthly payments to two of the persons who were his heirs according to Mohammedan Law. He also bequeathed movable property, namely, the profits of his business, to his trustee the same to be divided equally between his wife and his executor and after his wife's death the whole of the business to go to his executor if and when he married the testator's second daughter.

Held, (1) that there could be a valid bequest of profits of a business; (2) but the bequest to the widow was invalid as she was an heir and the other heirs did not consent; and (3) the condition about the trustee marrying the testator's second daughter was void and must be disregarded; and (4) therefore the executor took the business unconditionally and immediately; but (5) the testator could only validly dispose by will of one-third of his property; and (6) therefore the business must be valued and if its value amounted to one-third or less of the total net value of the testator's estate the executor would retain the whole but if the value exceeded one-third he must pay over the balance over one-third to be distributed with the rest of his estate in accordance with Mohammedan Law; (7) that with regard to the legacies of monthly payments to two of the heirs these were invalid as the other heirs did not consent.

ADJOURNED ORIGINATING SUMMONS.

K. A. Seth for plaintiff.

C. H. Smith for defendant.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Manning, J.—M. Mohamed Haniffa died at Singapore on the 10th May 1940. It is agreed that